

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION

JAN 19 2016

JULIA C. DUDLEY, CLERK  
BY:   
DEPUTY CLERK

UNITED STATES OF AMERICA

Case No. 7:04-cr-00128-1

v.

MEMORANDUM OPINION

WENDELL ANTONIO JOHNSON,  
Petitioner.

By: Hon. Michael F. Urbanski  
United States District Judge

Wendell Antonio Johnson, a federal inmate proceeding pro se, filed a "motion for relief pursuant to Fed. R. Civ. P. 60(b)(6)," by which Petitioner attempts to vacate his criminal convictions. Consequently, the court construes the Rule 60(b) motion as a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. See, e.g., Calderon v. Thompson, 523 U.S. 538, 554 (1998); United States v. Winestock, 340 F.3d 200, 207 (4th Cir. 2003). Court records indicate that the court already dismissed a prior § 2255 motion in which the current claims could have been raised. (ECF Nos. 197, 209). Thus, the instant § 2255 motion is a second or subsequent motion under 28 U.S.C. § 2255(h). Cf. United States v. Hairston, 754 F.3d 258, 262 (4th Cir. 2014).

The court may consider a second or successive § 2255 motion only upon specific certification from the United States Court of Appeals for the Fourth Circuit that a claim in the motion meets certain criteria. See 28 U.S.C. § 2255(h). As Petitioner has not submitted any evidence of having obtained certification from the Court of Appeals to file a second or successive § 2255 motion, the court dismisses the § 2255 motion without prejudice as successive. Based upon the court's finding that Petitioner has not made the requisite substantial showing of denial of a constitutional right as required by 28 U.S.C. § 2253(c), a certificate of appealability is denied.

ENTER: This 18<sup>th</sup> day of January, 2016.

  
United States District Judge